

Letter of Findings: 41-20200217; 42-20200218
International Fuel Tax Agreement (IFTA) and International Registration Plan (IRP) Assessments
For the Years 2017, 2018, and 2019

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Motor Carrier was unable to provide 2017, 2018, and 2019 original source records sufficient to allow Indiana to accurately apportion IFTA taxes and IRP fees owed to the various jurisdictions in which Motor Carrier's vehicle traveled. The Department disagreed with Motor Carrier that its strained financial circumstances justified the Department in abating fees and taxes.

ISSUE

I. International Fuel Tax Agreement Tax and International Registration Plan Fees - Tax and Fee Abatement.

Authority: IC § 6-6-4.1-4(a); IC § 6-6-4.1-14; IC § 6-6-4.1-20; IC § 6-6-4.1-24(b); IC § 6-8.1-3-14; IC § 6-8.1-5-1(c); IC § 6-8.1-5-4(a); IC § 6-8.1-5-4(c); IC § 9-28-4-6; IFTA Procedures Manual, § P510 (2017); IRP § 1005 (2019); IRP § 1015 (2019); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); International Fuel Tax Agreement, <https://www.fin.gov.on.ca/en/tax/ifta/>.

Taxpayer asks that the Department consider the particular circumstances surrounding the past and present operation of his trucking business and - bearing in mind those circumstances - that the Department abate the assessment of IFTA tax and IRP fees.

STATEMENT OF FACTS

Taxpayer is an Indiana, multi-state motor carrier which - according to publicly available information - is a general freight hauler. Taxpayer provides year-round services to customers in Indiana and outside Indiana.

Taxpayer employs three drivers and operates one truck and one trailer. Taxpayer's vehicle travels both interstate and intrastate highways in providing Taxpayer's hauling services. Taxpayer chose Indiana as its base jurisdiction for purposes of the International Fuel Tax Association ("IFTA") and for purposes of the International Registration Plan ("IRP"). The Indiana Department of Revenue ("Department") conducted an IFTA and IRP audit, which resulted in the assessment of additional 2017 IFTA taxes and additional 2018 and 2019 IRP fees. Along with the assessment of the IFTA taxes, the Department also imposed penalty and interest amounts.

Taxpayer disagreed with the IFTA and IRP assessments on the ground that it was unable to provide the Department documents requested during the audit only because its vendor tasked with maintaining those distance and fuel records failed to do so. Taxpayer explains that when the trucking business was started, he - as the owner - was "new in the industry" and that he had trusted his errant vendor to fulfill its record keeping responsibilities. In addition, Taxpayer explains that he had retained the original fuel receipts but that these were lost when the Taxpayer moved its office.

Taxpayer submitted a protest outlining its objections. In its protest submission, Taxpayer asked the Department to bear in mind its commitment to maintain "all receipts and data" in the future and that Taxpayer needs assistance to "survive in this crucial year."

I. International Fuel Tax Agreement Tax and International Registration Plan Fees - Tax and Fee Abatement.

DISCUSSION

A. Indiana's IFTA Audit Findings.

The IFTA tax assessment was attributable to the Department's finding that Taxpayer's "records presented for audit were not compliant and . . . rated as inadequate." The audit report states that Taxpayer did not provide adequate distance records . . . , did not provide fuel consumption documents, and that "MPGs could not verified" because the "trip distances were not available."

The audit explains the reasons for the assessment of additional IFTA taxes. "The auditor reduced the reported MPGs by 20[percent] in the audit period." As a result, "Total fuel was increased in all quarters of the audit provided." In addition, the audit disallowed all reported fuel credits because fuel receipts were unavailable.

The audit report concluded that the absence of these records "substantially impacted the audit process."

In effect, the Department - representing Indiana as Taxpayer's "base jurisdiction" - was unable to accurately apportion the proper amount of tax owed the various member jurisdictions in which Taxpayer traveled during 2017.

As a result and based upon the limited information available, the Department concluded that Taxpayer owed approximately \$2,700 in additional IFTA tax. Along with that tax, the Department also assessed approximately \$400 in interest and \$300 in penalties.

1. Taxpayer's Burden of Establishing That the IFTA Assessment Should be Abated.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing proposed penalty assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

2. IFTA Requirements and Taxpayer's Responsibilities Under That Agreement.

IFTA is an agreement between various United States jurisdictions and certain Canada allowing for the equitable apportionment of previously collected motor carrier fuel taxes. International Fuel Tax Agreement, <https://www.fin.gov.on.ca/en/tax/ifta/> (last visited March 12, 2020). The agreement's stated goal is to simplify the taxing, licensing, and reporting requirements of interstate motor carriers such as Taxpayer. The agreement itself is not a statute but was implemented in Indiana pursuant to the authority specifically granted under IC § 6-6-4.1-14(a) and IC § 6-8.1-3-14.

Taxpayer operated at least one vehicle in Indiana. As such, it operated on Indiana highways and consumed motor fuel while on those highways. Therefore, the Taxpayer was subject to Indiana motor carrier fuel taxes under the IFTA. IC § 6-6-4.1-4(a).

Tax assessments of motor carrier fuel tax under IFTA are presumed to be valid. IC § 6-6-4.1-24(b). In addressing any challenges to those assessments, the taxpayer bears the burden of proving that any assessment is incorrect. *Id.* The taxpayer has a duty to maintain books and records and present them to the Department for review upon the Department's request. IC § 6-6-4.1-20; IC § 6-8.1-5-4(a).

The Department here will not belabor the point but as an Indiana licensee, Taxpayer is subject to the specific, detailed reporting requirements under the IFTA.

According to the IFTA Procedures Manual, § P530 (2017) in part, imposes upon licensees the responsibility to maintain verifiable mileage and fuel purchase records:

The records maintained by a licensee under this article shall be adequate to **enable the base jurisdiction to verify the distances traveled and fuel purchased by the licensee** for the period under audit and to evaluate the accuracy of the licensee's distance and fuel accounting systems for its fleet. The adequacy of a licensee's records is to be ascertained by the records' sufficiency and appropriateness. Sufficiency is a

measure of the quantity of records produced; that is, whether there are enough records to substantially document the operations of the licensee's fleet. The appropriateness of the records is a measure of their quality; that is, whether the records contain the kind of information an auditor needs to audit the licensee for the purposes stated in the preceding paragraph. Records that are sufficient and appropriate are to be deemed adequate.

(Emphasis added).

In addition, the IFTA Procedures Manual at § P550.100 (2017) imposes upon IFTA licensees the responsibility of maintaining and then providing verifiable fuel purchase and fuel consumption records.

The licensee shall maintain complete records of all motor fuel purchased, received, or used in the conduct of its business, and on request, produce these records for audit. The records shall be adequate for the auditor to verify the total amount of fuel placed into the licensee's qualified motor vehicles, by fuel type.

One of those record keeping requirements of is maintaining specific records such as fuel receipts per § P550 and detailed distance records with supporting documentation per § P540 of the IFTA Procedures Manual (2017). According to the IFTA Procedures Manual, § P510 (2017) provides in part that:

A licensee shall retain the records of its operations to which IFTA reporting requirements apply for a period of four years following the date the IFTA tax return for such operations was due or was filed, whichever is later, plus any period covered by waivers or jeopardy assessments. **A licensee must preserve all fuel and distance records** for the period covered by the quarterly tax returns for any periods under audit in accordance with the laws of the base jurisdiction.

(Emphasis added).

Exercising its authority and responsibility as the Taxpayer's chosen base jurisdiction, the Department assessed the additional IFTA tax, penalty, and interest.

3. Taxpayer's Objections IFTA Assessment and Request to Abate that Assessment.

Taxpayer, as stated above, has no basis for challenging the basis for the IFTA tax, penalty, or interest. Instead, Taxpayer asks the Department to abate those amounts because it relied on others to maintain fuel and distance records and that - presumably - it acted in good but naïve faith in those other persons. In addition, Taxpayer asks that the Department consider its intention to maintain the required records on a "going-forward" basis.

B. Indiana's IRP Audit Findings.

The Department conducted a fuel and mileage tax audit of Taxpayer's travel records and determined that Taxpayer owed additional 2018 and 2019 IRP fees. The assessment of the additional \$1,700 amount was "based on inadequate records"

The IRP audit report explained that the "records presented for audit were not compliant and have been rated as inadequate" because those records "did not support the reported distances [and] [t]rips could not checked for jurisdictional continuity or travel in all quarters of the audit period."

1. IRP Requirements and Taxpayer's Record Keeping Responsibilities.

The Indiana Code permits Indiana to join the IRP agreement ("the Plan") under IC § 6-6-4.1-14 and IC § 9-28-4-6. IC § 6-6-4.1-14(a) states in relevant part:

The commissioner or, with the commissioner's approval, the reciprocity commission created by [IC 9-28-4](#) may enter into the International Registration Plan, the International Fuel Tax Agreement, or other reciprocal agreements with the appropriate official or officials of any other state or jurisdiction to exempt commercial motor vehicles licensed in the other state or jurisdiction from any of the requirements that would otherwise be imposed by this chapter

IC § 9-28-4-6 states in relevant part:

(a) The department of state revenue, on behalf of the state, may enter into reciprocal agreements providing

for the registration of vehicles on an apportionment or allocation basis with the proper authority of any state, any commonwealth, the District of Columbia, a state or province of a foreign country, or a territory or possession of either the United States or of a foreign country.

(b) To implement this chapter, the state may enter into and become a member of the International Registration Plan or other designation that may be given to a reciprocity plan developed by the American Association of Motor Vehicle Administrators.

Although Taxpayer operated a vehicle in Indiana and other states, Taxpayer selected Indiana as its base jurisdiction, pursuant to Article IV of the Plan (2013). In conjunction with the IFTA audit, the Department conducted an IRP audit under the terms of Articles XV and XVI of the Plan (2013) and the International Registration Plans Audit Procedures Manual.

The Department selected August 2018 to July 2019 as the registration year to audit. The Department determined that Taxpayer owed additional IRP fees based upon the documentation provided. § 1005 of the Plan (2019) explains that:

(a) The Records maintained by a Registrant under Section 1000 shall be adequate to enable the Base Jurisdiction to verify the distances reported in the Registrant's application for apportioned registration and to evaluate the accuracy of the Registrant's distance accounting system for its Fleet.

(b) Provided a Registrant's Records meet the criterion in subsection (a), the Records may be produced through any means, and retained in any format or medium available to the Registrant and accessible by the Base Jurisdiction.

§ 1015 of the Plan (2019) goes on to provide in part that:

If the Records produced by the Registrant for Audit do not, for the Registrant's Fleet as a whole, meet the criterion in Section 1005(a), or if, within 30 calendar days of the issuance of a written request by the Base Jurisdiction, the Registrant produces no Records, the Base Jurisdiction shall impose on the Registrant an assessment in the amount of **twenty percent of the Apportionable Fees** paid by the Registrant for the registration of its Fleet in the Registration Year to which the Records pertain.

(Emphasis added).

As with the IFTA tax audit noted above, Department's audit found that Taxpayer's records "were not compliant and have been treated as inadequate." As further explained in the audit report, "The documentation presented for audit did not support the reported distances" and "[t]rips could not be checked for jurisdictional continuity or travel in all quarters of the audit period."

As a result, the Department's audit resorted to § 1015 of the Plan (2019) to impose a 20 percent assessment of the apportionable IRP fees.

2. Taxpayer's Burden of Establishing that the IRP Fees Should be Abated.

It should be pointed out that, "Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for tax by reviewing those books and records." IC § 6-8.1-5-4(a). In addition, IC § 6-8.1-5-4(c) provides that, "A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times." IC § 6-8.1-5-4(c).

It is Taxpayer's responsibility to maintain specific, detailed, and accurate information concerning its fuel purchases and jurisdiction miles. In the absence of complete, detailed source documentation, the Department's additional assessment of IRP fees, based upon § 1015 of the Plan (2019), assessment is reasonable and supported by law and the Plan and its Audit Procedures Manual. The taxpayer bears the burden of proving that any assessment is incorrect, and Taxpayer has failed to meet that burden. IC § 6-8.1-5-1(c); *Lafayette Square*, 867 N.E.2d at 292.

C. Conclusions.

The Department is not unsympathetic to Taxpayer's predicament and recognizes that Taxpayer believed it acted in good faith in reliance on its vendor to record and maintain the requisite IRP records. The Department also

recognizes Taxpayer's equally good faith intention to properly maintain these records on an ongoing basis.

However, the Department has no authority to abate either the IFTA taxes or the IRP fees based on the reasons set out by Taxpayer. The law on the issues is plain; the Department is required to adjust assessments when and if the affected taxpayer is able to show that the assessment is "wrong" and Taxpayer here has failed to do so.

FINDING

Taxpayer's request is respectfully declined.

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